



VIA FOIA online

January 20, 2017

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Phone: (202) 566-1667

Re: Freedom of Information Act request – EPA databases

Dear FOIA Officer:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency (EPA) provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.* This request is sent to you because you were identified as the proper person to receive such requests. If this request should be directed at another person, please forward this request to that person.

Sierra Club is the nation’s oldest grassroots organization. It has more than 2.7 million members and supporters nationwide. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club’s purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of climate change, fossil fuel energy and clean energy. It has been conducting multiple public campaigns around these issues, including its Beyond Coal Campaign and Dirty Fuels Campaign. This request is made on behalf of those campaigns, as well as the organization’s long standing interest in government accountability and transparency.

Sierra Club is concerned that vital information maintained by EPA on public websites is at risk of being destroyed and/or unavailable to the public under the new Presidential administration. Information at risk includes but is not limited to: climate and pollution data, surveys, and reports; compliance data; guidance and prior permitting decisions; air dispersion

modeling data; air monitoring data; and enforcement information. This information is of substantial interest to Sierra Club members and its partners, as well as the general public.

Note Sierra Club previously requested Items Nos. 9, 10, and 13-26 in FOIA request EPA-HQ-2017-002792, dated January 12, 2017, in a different format.

Sierra Club Requests all the following Records related to EPA's work on climate change:¹

1. Greenhouse gas emissions data and emissions reductions;
2. Climate policy;
3. Climate science;
4. Costs and benefits of greenhouse gas emissions reductions;
5. Social costs of carbon and methane;
6. International activities related to climate change;
7. State, local, and tribal climate programs;
8. Climate adaptation;
9. Data available through EPA's Greenhouse Gas Reporting Program, available as of January 19, 2017 at <https://www.epa.gov/ghgreporting>;
10. Data available through EPA's GHG Inventory Report: 1990-2014, available as of January 19, 2017 at <https://www.epa.gov/ghgemissions/us-greenhouse-gas-inventory-report-1990-2014>;
11. Data available at EPA's U.S. Greenhouse Gas Inventory Report Archive, available as of January 19, 2017 at <https://www.epa.gov/ghgemissions/us-greenhouse-gas-inventory-report-archive>;
12. Records received pursuant to EPA's 2016 Information Collection Request for oil and gas operators and facilities.

¹ "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA, National Headquarters and all of its Offices, Regions and other subdivisions.

Additionally Sierra Club requests the following EPA Records:

13. EPA's Coal combustion Residuals Impoundment Assessment Reports, available as of January 19, 2017 at https://www.epa.gov/sites/production/files/2016-06/documents/ccr_impoundmnt_asesmnt_rprts.pdf;
14. Data on 676 surface impoundments at 240 facilities from EPA's 2009 Coal Ash Impoundment Survey: Information Request Responses From Electric Utilities to EPA Information Request Letter, available as of January 19, 2017 at <https://archive.epa.gov/epawaste/nonhaz/industrial/special/fossil/web/html/index-3.html>;
15. Data available through EPA's Enforcement and Compliance History Online, available as of January 19, 2017 at <https://echo.epa.gov/>;
16. Data available through EPA's Integrated Risk Information System, available as of January 19, 2017 at <https://www.epa.gov/iris>;
17. All of EPA's NSR, NSPS, and Title V guidance and applicability determinations, including those available as of January 19, 2017 at the following websites:
 - a. Title V Petition Database, <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>;
 - b. Title V Operating Permit Policy and Guidance Document Index, <https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index>;
 - c. New Source Review Policy and Guidance Document Index, <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>;
18. Data available through EPA's EJSCREEN: Environmental Justice Screening and Mapping Tool, available as of January 19, 2017 at <https://www.epa.gov/ejscreen>;
19. Data available through EPA's Air Quality System, available as of January 19, 2017 at <https://www.epa.gov/aqs>;
20. Data available through EPA's Air Data: Air Quality Data Collected at Outdoor Monitors Across the US, available as of January 19, 2017 at <https://www.epa.gov/outdoor-air-quality-data>;
21. Data available through EPA's Clean Air Markets, available as of January 19, 2017 at <https://www.epa.gov/airmarkets>;
22. Data available through EPA's Air Emissions Inventories, available as of January 19, 2017 at <https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei>;

23. Data available through EPA's Technical Air Pollution Resources website, including modeling results and inputs, available as of January 19, 2017 at <https://www.epa.gov/technical-air-pollution-resources>;
24. Data available through EPA's RACT/BACT/LAER Clearinghouse, available as of January 19, 2017 at <https://cfpub.epa.gov/RBLC/index.cfm?action=Home.Home>;
25. Data available through EPA's National Air Toxics Assessment, available as of January 19, 2017 at <https://www.epa.gov/national-air-toxics-assessment>;
26. All of the administrative, civil and criminal enforcement datasets at both EPA and DOJ, including but not limited to information available as of January 19, 2017 at following websites:
 - a. <https://cfpub.epa.gov/enforcement/cases/>;
 - b. <https://www.epa.gov/enforcement/clean-air-act-vehicle-and-engine-enforcement-case-resolutions>;
 - c. <https://www.epa.gov/enforcement/coal-fired-power-plant-enforcement>.
27. Data available through EPA's Pesticides Industry Sales and Usage 2006 and 2007 Market Estimates, available as of January 19, 2017 at <https://www.epa.gov/pesticides/pesticides-industry-sales-and-usage-2006-and-2007-market-estimates>;
28. Data available through EPA's Environmental Impact Statement (EIS) Database, available as of January 19, 2017 at <https://cdxnodengn.epa.gov/cdx-enepapublic/action/eis/search>;
29. Data available through EPA's Assessing and Managing Chemicals under TSCA, available as of January 19, 2017 including but not limited to EPA's ChemView database, available at <https://java.epa.gov/chemview>;
30. Data available through EPA's National Service Center for Environmental Publications, available as of January 19, 2017 at <https://nepis.epa.gov/Exe/ZyNET.EXE?User=anonymous&Password=anonymous&Client=EPA&ZyActionL=Register&Init=1>;
31. Data available through EPA's Avoided Emissions and Generation Tool (AVERT), available as of January 19, 2017 at <https://www.epa.gov/statelocalclimate/avoided-emissions-and-generation-tool-avert#download>;
32. All reports issued by EPA's Science Advisory Board, available as of January 19, 2017 at <https://yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/advisoryreports?OpenDocument>;
33. All reports issued by EPA's Clean Air Scientific Advisory Committee, available as of January 19, 2017 at <https://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>;

34. Data hosted at EPA's List of Publicly Accessible Internet Sites Hosting Compliance Data and Information Required by the Disposal of Coal Combustion Residuals Rule, available as of January 19, 2017 at <https://www.epa.gov/coalash/list-publicly-accessible-internet-sites-hosting-compliance-data-and-information-required>;
35. Data available at EPA's Superfund portal, available as of January 19, 2017 at <https://www.epa.gov/superfund>;
36. Data available at EPA's Community-Focused Exposure and Risk Screening Tool (C-FERST) portal, available as of January 19, 2017 at <https://www.epa.gov/c-ferst>;
37. Data available at EPA's Tribal-Focused Environmental Risk and Sustainability Tool (Tribal-FERST) portal, available as of January 19, 2017 at <https://www.epa.gov/t-ferst>;
38. Data available at EPA's EnviroAtlas portal, available as of January 19, 2017 at <https://www.epa.gov/enviroatlas>;
39. Data available at EPA's SIP Status Reports portal, available as of January 19, 2017 at <https://www.epa.gov/air-quality-implementation-plans/sip-status-reports>;
40. Data available at EPA's Science Inventory database, available as of January 19, 2017 at <https://cfpub.epa.gov/si/>;
41. Data available at EPA's Nonattainment Areas for Criteria Pollutants (Green Book) portal, available as of January 19, 2017 at <https://www.epa.gov/green-book>;
42. Data available at EPA's Toxics Release Inventory (TRI) Program portal, available as of January 19, 2017 at <https://www.epa.gov/toxics-release-inventory-tri-program/tri-for-communities>;
43. Data available at EPA's Smart Growth portal, available as of January 19, 2017 at <https://www.epa.gov/smartgrowth>;
44. Data available at EPA's Brownfields portal, available as of January 19, 2017 at <https://www.epa.gov/brownfields>;
45. Data available at EPA's Resource Conservation and Recovery Act (RCRA) Laws and Regulations portal, available as of January 19, 2017 at <https://www.epa.gov/rcra>;
46. Data available at EPA's Environmental Health Resources for Community Members portal, available as of January 19, 2017 at <https://www.epa.gov/communityhealth>;
47. Data available at EPA's Lead and Copper Rule portal, available as of January 19, 2017 at <https://www.epa.gov/dwreginfo/lead-and-copper-rule>.

48. Data available at EPA's Capacity Building Program Management for Drinking Water Systems portal, available as of January 19, 2017 at <https://www.epa.gov/dwcapacity/capacity-building-program-management-drinking-water-systems>.

Duty to Preserve Records

EPA must preserve all of the records requested herein while this FOIA is pending or under appeal. EPA shall not destroy any records "while they are the subject of a pending request, appeal, or lawsuit under the FOIA." 40 C.F.R. § 2.106; *see Chambers v. U.S. Dep't of Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009) ("an agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under FOIA or the Privacy Act").

If any of the requested records are destroyed, the agency and responsible officials are subject to attorney fee awards and sanctions, including fines and disciplinary action. Indeed, a court had held EPA in contempt for "contumacious conduct" and ordered the agency to pay plaintiff's costs and fees for destroying "potentially responsive material contained on hard drives and email backup tapes." *Landmark Legal Found. v. EPA*, 272 F.Supp.2d 59, 62 (D.D.C. 2003); *see also Judicial Watch, Inc. v. Dep't of Commerce*, 384 F. Supp. 2d 163, 169 (D.D.C. 2005) (awarding attorneys' fees and costs because, among other factors, agency's "initial search was unlawful and egregiously mishandled and ...likely responsive documents were destroyed and removed"), *aff'd in relevant part*, 470 F.3d 363, 375 (D.C. Cir. 2006) (remanding in part to recalculate attorney fees assessed). In another case, in addition to imposing a \$10,000 fine and awarding attorneys' fees and costs, the court found that an Assistant United States Attorney prematurely "destroyed records responsive to [the] FOIA request while [the FOIA] litigation was pending" and referred him to the Department of Justice's Office of Professional Responsibility. *Jefferson v. Reno*, 123 F. Supp. 2d 1, 6 (D.D.C. 2000).

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to maintain public websites containing the requested information, so the public can access this important information regarding pollution in their communities.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records must specifically concern identifiable “operations and activities of the government.”

The requested records relate to data on climate, pollution and public health that EPA currently maintains on publicly available websites. These activities are unquestionably “identifiable operations or activities of the government.” The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government.

2. The disclosure of the requested documents must have an informative value and be “likely to contribute to an understanding of Federal government operations or activities.”

The FOIA Guide makes it clear that, in the Department of Justice's view, the “likely to contribute” determination hinges in part on whether the requested documents provide information that is not already in the public domain. Although they are currently available in the public domain, the requested records are “likely to contribute” to an understanding of your agency's activities and decisions if they are provided to Sierra Club in the requested format that is easily downloaded in bulk. There is legitimate cause for concern that the new Presidential Administration will soon make some or all of this data unavailable to the public. Further, a large portion of the data is only available piecemeal through individual queries on the EPA's current websites, so the entire set that is requested herein is not already easily accessible. This information will facilitate meaningful public participation in the decision-making process, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined.

The Sierra Club and its members have long-standing experience and expertise in the subject area of FOIA requests, specifically, issues related to the Clean Air Act, Clean Water Act, and the development and use of energy resources and protection of endangered species. Sierra Club also has a long standing interest in government accountability and transparency.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, including, but not limited to: analysis and distribution to the media, distribution through publication and mailing, posting on the Club's website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 40,730 unique visits and 100,381 page views; on average, the site gets 104 visits per day. Sierra Magazine, which is a quarterly magazine published by the Sierra Club, has a circulation of approximately 1,000,000. Sierra Club Insider, an electronic newsletter, is sent to over 850,000 people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, the Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on our various webpages, such as our [Beyond Coal Campaign](#) portal, our [Clean Energies Solutions](#) portal and our press releases.²

Sierra Club intends to share the information received from this FOIA request with the public.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure must contribute “significantly” to public understanding of government operations or activities. The public’s understanding must be likely to be enhanced by the disclosure to a significant extent.

The records requested will contribute to the public understanding of the EPA’s “operations and activities,” as the requested records include EPA surveys, reports, guidance, and collected information on regulated industrial sources. The disclosure of the requested records is essential to the public’s understanding of EPA’s operations and activities. After disclosure of these records, the public understanding of EPA’s activities will be significantly enhanced. The requirement that disclosure must contribute “significantly” to the public understanding is therefore met.

² For example, the Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the “public interest” in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not “primarily” in the Sierra Club’s commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of EPA’s activities.

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency’s regulations. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

Sierra Club requests all records be produced in a format that can easily be downloaded in bulk.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415.977.5544 or by e-mail at andrea.issod@sierraclub.org.



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